

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

**5:13-CR-194
(FJS)**

MICHAEL J. DAVIS,

Defendant.

APPEARANCES

OF COUNSEL

**OFFICE OF THE UNITED
STATES ATTORNEY**

100 South Clinton Street
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Attorneys for the United States

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120 East Washington Street
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Syracuse, New York 13202
Attorneys for Defendant

KENNETH M. MOYNIHAN, ESQ.

SCULLIN, Senior Judge

ORDER

A grand jury indicted Defendant on May 8, 2013, and charged him with unlawfully manufacturing marijuana in violation of 21 U.S.C. § 841(a)(1). *See* Dkt. No. 1. Defendant appeared for arraignment in connection with the charge before Magistrate Judge Dancks on May 16, 2013. *See* Text Minute Entry dated May 16, 2013. At that time, Magistrate Judge Dancks assigned the Northern District of New York Federal Public Defender to represent Defendant in this matter. *See id.* Subsequently, following a detention hearing, Magistrate Judge Dancks ordered Defendant detained pending trial. *See* Dkt. No. 11.

On May 28, 2013, Defendant's counsel wrote to the Court expressing his belief that

Defendant might be suffering from a mental disease rendering him mentally incompetent to stand trial and requesting that the Court refer Defendant for a psychiatric or psychological examination and report pursuant to 18 U.S.C. § 4241(b). *See* Dkt. No. 12. The Government advised the Court that it did not object to the request for a competency hearing. *See* Dkt. No. 13. This Court issued an Order referring the matter to Magistrate Judge Peebles to determine whether a psychiatric or psychological examination was warranted and, if it was, to order the examination and to schedule a competency hearing as soon as practicable. *See* Dkt. No. 14.

Magistrate Judge Peebles held a hearing on June 17, 2013, and found that a substantial question existed regarding whether Defendant was fully able to understand the nature and consequences of the proceedings against him and properly assist in his defense. *See* Text Minute Entry dated June 17, 2013. Accordingly, he issued an Order directing that Defendant be committed to the custody of the Attorney General for a reasonable period for the purpose of conducting a psychiatric or psychological examination to determine his mental competence pursuant to 18 U.S.C. § 4241. *See* Dkt. No. 16.

Defendant was transported to the Devens Federal Medical Center ("FMC Devens"), a federal Bureau of Prisons facility, for the required examination. Various professionals, under the direction of Dr. Miriam Kissin, Psy. D., a forensic psychologist, tested and examined Defendant. *See generally* Dkt. No. 17. On September 6, 2013, Dr. Kissin issued a report in which she concluded that Defendant suffered from a psychotic disorder that compromised his rational understanding of the nature and consequences of the proceedings against him and interfered with his ability to assist his attorney effectively in his defense. *See id.*

After receiving Dr. Kissin's report, Magistrate Judge Peebles conducted a hearing on

October 7, 2013, at which, among other things, he relieved the Federal Public Defender of the assignment in this case based on an apparent disagreement between Defendant and his counsel concerning the issue of competence. *See* Text Minute Entry dated October 7, 2013. On October 16, 2013, Magistrate Judge Peebles appointed Kenneth M. Moynihan to represent Defendant in this matter. *See* Dkt. No. 18.

Following the substitution of counsel and after affording Defendant's new counsel an opportunity to prepare, Magistrate Judge Peebles conducted a hearing on February 20, 2014, to address the question of Defendant's competence to stand trial. *See* Text Minute Entry dated February 20, 2014. Dr. Kissin testified at the hearing by video conference and provided details of Defendant's evaluation at FMC Devens and her opinions. *See id.* Defendant also testified. *See id.* At the conclusion of the hearing, Magistrate Judge Peebles reserved decision and directed the parties to provide him with their assessments of the testimony adduced during the hearing. *See id.*

On April 3, 2014, Magistrate Judge Peebles issued a Report and Recommendation, in which, after considering Dr. Kissin's psychological report and her testimony, as well as Defendant's testimony and counsels' arguments, he concluded that Defendant possessed a sufficient present ability to consult with his counsel with a reasonable degree of rational legal understanding and that Defendant had a rational, as well as factual, understanding of the charges pending against him. *See* Dkt. No. 21 at 16. Therefore, Magistrate Judge Peebles recommended that the Court find Defendant competent to stand trial. *See id.* The parties did not file any objections to Magistrate Judge Peebles' recommendation.

After reviewing Magistrate Judge Peebles' April 3, 2014 Report and Recommendation,

the relevant parts of the record, and the applicable law, the Court hereby

ORDERS that Magistrate Judge Peebles' Report and Recommendation, dated April 3, 2014, is **ACCEPTED** in its entirety for the reasons stated therein; and the Court further

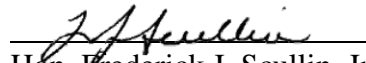
ORDERS that the prosecution of this matter shall proceed based on the Court's finding that Defendant is competent to proceed; and the Court further

ORDERS that the parties shall file any motions on or before May 13, 2014, and shall make those motions returnable on June 13, 2014 on submission; and the Court further

ORDERS that, if the parties do not file any motions, the trial of this matter will commence on May 19, 2014 at 10:00am in Syracuse.

IT IS SO ORDERED.

Dated: April 23, 2014
Syracuse, New York


Hon. Frederick J. Scullin, Jr.
Senior U.S. District Judge